mortgage of, or charge or lien on, the insolvent's property;

(e) to pay the wages of labourers (if any) in accordance with the provisions of Chapter XI of "The Labour Code, 1912";

(f) to pay all wages or salary of every clerk, servant, labourer, or workman, other than labourers referred to in clause (e), not exceeding two hundred dollars, in respect of services rendered to the insolvent during three months before the date of the declaration of insolvency;

(g) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference."

This gives priority to all Government claims of whatever nature.

But the Bankruptcy Enactment expressly repeals this provision and in its stead we find the rule of priority of debts as set out in section 38 in which priority is given only to sums of money due in respect of rates or taxes for the current year.

This means that the Legislature have deliberately and intentionally cut down the priority right of Government.

The Bankruptcy Enactment is based upon the English Acts and the priority given to Government in section 38 of our Enactment is the same as that given to the Crown in section 33 of the English Acts.

There was no need to insert in the local Enactment a section similar to section 151 of the English Act because there did not exist any Common Law priority for Government debts such as appears to have existed in England for Crown debts.

As I have remarked I do not consider the re-enacting, in section 32 of the Government Suits Enactment 1928, of the provisions of the Government Debts Priority Enactment 1904 in any way affects the operation of section 38 of the Bankruptcy Enactment. The partial preference of payment there given does not apply to distribution in bankruptcy.

It was submitted in argument by the Deputy Legal Adviser (Mr. Hay) that since the enactment of the Civil Law Enactment 1937 there arose, by virtue of section 2 thereof, a Common Law right of priority in respect of Crown debts and that by virtue of such a Crown debt took priority over even a landlord's right of distress for rent.

I am quite prepared to agree that in this country a debt due to Government is the same thing as a Crown debt, but this argument is, I think, disposed of by pointing out that the rights and priorities of Government debts of various kinds have been laid down by express enactment, generally in section 32 of the Government Suits Enactment and, as regards particular kinds of debts, in other enactments and that, therefore, the Common Law of England is excluded by the opening proviso of section 2 of the Civil Law Enactment, i.e.—

"2(i) Save in so far as other provision has been or may hereafter be made by any written law in force in the Federated Malay States the Common Law of England.....shall be in force in the Federated Malay States....."

It must be pointed out that under the British Bankruptcy Acts the provisions of the Acts relating to priorities of debts are, by section 151, made binding on the Crown, and, by section 33 (the priority section), no general priority is given to Crown debts; the only priority given being in respect of rates and taxes for twelve months, i.e. similar to the priority given by section 38(i)(c) of our Enactment, so that in England whatever Common Law priority existed in favour of Crown debts was destroyed as regards bankruptcy by section 151 of the Bankruptcy Act. Consequently since section 2 of the Civil Law Enactment only imports into our law "the common law of England as administered in England at the commencement of this Enactment' this argument fails since there is now in Bankruptcy no such common law priority for Crown debts.

Order accordingly.

[REVISIONAL CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

December 21, 1938.

THE STATE OF NEGRI SEMBILAN.

v.

SALLEH BIN ABU.

[NEGRI SEMBILAN MISCELLANEOUS CRIMINAL APPLICATION No. 5 of 1938]

Road Traffic Enactment, 1937, S. 34.—Effect of.

The provisions of Section 34 of the Road Traffic Enactment, 1937, as to notice of intended prosecution apply only to those cases where proceedings are instituted by Summons and not to proceedings where an accused person has been arrested under Section 32 of the Enactment and produced and charged immediately after arrest.

CRIMINAL REVISION.

J. F. Draper, Deputy Public Prosecutor, for the State.

Cur. adv. Vult.

RAJA MUSA, AG. J.—In this case the accused was the driver of a motor lorry which became involved in a serious accident with another motor lorry on the 14th September 1938. The accused was arrested on the same day and

on the following day, the 15th September 1938, he was charged with a charge in these terms:—

> "That you on 14.9.1938 about 1.30 p.m. at 8½ mile Seremban-Rantau Road, Seremban, being the driver of a goods vehicle No. N.S. 4722, did drive the said vehicle in a dangerous manner and thereby collided against another goods vehicle No. N.S.4387 an offence under section 25 (1) Enactment 17/1937."

Against that charge there appears the following note:—

> "To 23.9.38 for mention. Bail $500/–.
> Sd./– J. P. Biddulph
> 15.9.38.
>
> Bail reduced to $200/–
> Sd./– J. P. Biddulph
> 15.9.38.

Under section 173 (a) of the Criminal Procedure Code when an accused person appears before a Magistrate a charge containing the particulars of the offence of which he is accused shall be framed and read out and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried.

In this case there was the charge and I presume under section 114 illustration (e) of the Evidence Enactment that it was read out and explained to the accused and that he claimed to be tried although the note above does not specifically say so.

The position then is that on the 15th September the accused was actually charged before the Magistrate and the matter was adjourned

The case was adjourned from time to time on account of the fact that the driver of the other lorry who was a material witness in the case was lying injured in hospital as a result of the accident and it finally came on for hearing on the 10th November 1938 before the learned Magistrate at Seremban.

The learned Magistrate convicted the accused but has referred the matter to this Court as to the effect of section 34 of the Road Traffic Enactment 1937.

Beyond the charge no notice under section 34 was ever served on the accused.

I am greatly indebted to the learned Deputy for the great assistance he has rendered me by his able argument of this case.

My only regret is that the accused was not represented before me.

From a study of that part of the Road Traffic Enactment 1937 which contains sections 25, 26, 32 and 34 it seems clear to me that the real object of section 34 is to give a motorist reasonable notice of an intended prosecution for certain offences so as to give him an opportunity of throwing his mind back to some reasonable time. It seems to me to be manifestly just and fair that some period of time should be fixed since otherwise a motorist might be suddenly summoned today for speeding at some place or other some two months or so ago and he would probably find it extremely difficult to meet such a charge.

In this case the charge gave the accused on the very next day after the accident all the particulars of the matters that he had to meet and he cannot be said to have had no notice of the charge against him.

Section 34 requires "notice of the *intended* prosecution" to be served. To my mind an intended prosecution and an actual prosecution are two distinct and separate things. In the one it is merely an intention while in the other it is an accomplished fact.

Section 32 authorises the arrest of a motorist found committing an offence under section 26. Surely he can be tried and convicted at any time within 14 days of the commission of the offence without any notice being served on him under section 34. This is so because the prosecution has been launched against him and there is no longer any question of any intention to prosecute him, that intention having so to speak merged in the actual prosecution.

It seems to me therefore that if he can be convicted within 14 days without the notice under section 34 there is no legitimate reason why he could not be convicted after the 14 days so long as the prosecution was instituted against him within 14 days.

For these reasons I have come to the conclusion that the provisions of section 34 apply only to those cases where proceedings are instituted by summons and not to proceedings where an accused person has been arrested under the provisions of section 32 and produced and charged before a competent Court forthwith.

I accordingly hold that in this case the conviction is right and I direct the learned Magistrate to proceed to determine the case.

Conviction affirmed.

[APPELLATE CRIMINAL JURISDICTION]

HASTINGS, J.

July 21, 1938.

KHOR PENG YAM.....Appellant

vs.

PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 31 of 1938]

Rubber Regulation Enactment, No. 37 of 1936 Sec. 19—planting of rubber trees on "any acre."

It is not permissible for any owner of a holding to plant on any acre of the holding which had rubber plants growing thereon whether before or after the 1st day of June, 1934, which has not been planted in contravention of the Rubber Regulation Enactment more than 30 trees